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NO. 85-6725

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WILLIAM JOHN BOURJAILY,
PETITIONER,

VS.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITIONER'S REPLY BRIEF

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The suggestion implicit in the Government's Brief, that the cocaine Greathouse (the informant) transferred to Lonardo (his partner) was "to be sold by people Lonardo was to solicit" (Government's Brief, 1-2), is no less a naked and indefensible supposition now than it was when originally articulated. Indeed, the incontrovertible facts show Lonardo fully intended to only sell the cocaine here involved, for the benefit of himself and Greathouse, to anyone willing to pay their price. Simply put, the Government's inferential notions to the contrary notwithstanding, the "people" Lonardo referred to as "his 'people'" (id., 6-7, n. 5) could only have been the different individuals Lonardo contacted as potential buyers of one or more of the various parcels that were being offered by Lonardo and Greathouse for sale at prices fixed for them.

Now admittedly the Government has to argue, as it does by clever implications and wild assertions, that these "people"

would be furthering some interest of Lonardo other than paying him the price involved in their respective purchases. Obviously then, the argument was made in order to create a basis for the Government's farfetched assertion that all of those contacted by Lonardo automatically became involved in some sort of joint effort. Still there was nothing in the evidence that shows this to be the case.

On the other hand, it makes absolutely no sense for the Government to argue, as it apparently does, that if "A" (Lonardo) makes, or even attempts to make, a sale of drugs to "B" (assertedly our petitioner) for a fixed sum of money, this would put "A" in a conspiratorial relationship with "B" in connection with anything "B" may have possibly contemplated doing with the drugs after actually acquiring them. Even this is not all. Any propositions or discussions "B" may have had with "A" would also put "B" in a conspiratorial relationship with anyone else "A" might have sought to sell, or even discussed selling, drugs to from his supply.

Obviously the reason all this would be unfathomable could not be clearer. Simply put, at best any dealings between "A" and "B", absent proof of an ongoing relationship, could only be regarded as an isolatable sale, or attempted sale, that was unrelated to any other aspects of "A's" drug dealings with others. This follows here all the more so because even the Government has conceded these sales were subject to a test being made of the quality product involved. (Id., at 2.) (Also see R 168.)

(2)

Another completely arbitrary statement in the Government's Brief reads as follows: "On May 25, Petitioner spoke directly with Greathouse about the cocaine transaction" (id., 6-7, n. 5).

(Emphasis supplied.) Typically, the Government has assumed something must be so because they say so. Obviously the reason the Government has relied so heavily on this penchant for exaggeration is really not surprising.

On the other hand, not even the Government can get away from the total lack of any proof whatsoever that our petitioner ever talked to Greathouse, as the Government contends, in hopes of making a point it really needs. Moreover, it cannot be overlooked that it is just as likely that whoever it was that talked to Greathouse about the quality and the price of the cocaine (Greathouse and Lonardo were trying to sell) was simply one of the anonymous people Lonardo had referred to as "some people" (id., 2) or "Lonardo's people" (id., 5), as the Government would put it, that he would be contacting. His purpose in doing this was to make the effort to sell them his product.

In any event Lonardo, as the Government concedes, only told Greathouse on May 17 "he would get in touch with 'some people' and contact Greathouse" again (ibid.). And, again on May 24 Lonardo is credited with telling Greathouse "he would try to contact some people" (ibid.). Obviously this was to see if any of these people were interested in buying any of what Lonardo thought was their cocaine. This can hardly mean that those actually contacted would perforce be partners (with each other and with Lonardo) even if they did or did not purchase from Lonardo as a common source. And, just as surely it does not follow that because our petitioner was seen in the parking lot he had to have been the person Greathouse talked to in the conversation referred to above.

The conclusion that this unknown person had to have been our petitioner is simply too unreasonable to be relied on as a fact.

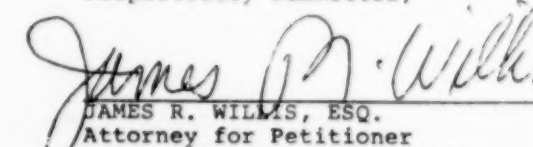
To the extent then this conclusion, if valid, would provide support for the Government's overall thesis, it's invalidity should have the exact opposite effect.

(3)

Another point made in the Government's Brief merits at least a passing reference. This, of course, is the contention made that the egregious hearsay evidence was properly admitted under 801 (d) (2) (E) and that no confrontation rights were offended. On this we contend the arguments made in our Petition should carry the day for the petitioner. For it simply has to be that the Government's analysis of the central thrust of our position cannot survive meaningful scrutiny. Also, the argument that the conduct of our petitioner in the parking lot, which at most can only be said to be suspicious, hardly satisfies the possession and knowledge aspects of the offense charged.

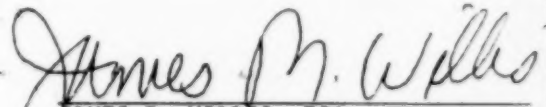
For all of these reasons, including the lack of substance in the Government's arguments, this cause should be reviewed.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was mailed to the offices of Charles Fried, Solicitor General; Stephen S. Trott, Assistant Attorney General; and Joel M. Gershowitz, Attorney, at The Department Of Justice, Washington, D.C. 20530, this 10th day of July, 1986.


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